

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

vs.

CIVIL ACTION NO. 3:18-cv-329-WHB-JCG

WILLIAM HART

DEFENDANT

**COMPLAINT**

Plaintiff United States of America, by and through the United States Attorney for the Southern District of Mississippi and the undersigned Assistant United States Attorney for said District, on behalf of its agency, the United States Department of Education, alleges the following in support of its Complaint against Defendant William Hart:

**I. Parties and Nature of Action**

1. This is a civil action brought by Plaintiff United States to collect a student loan debt from Defendant Hart under the U.S. Department of Education's William D. Ford Federal Direct Loan Program. 20 U.S.C. § 1087a *et seq.*; 34 C.F.R. Part 685.

**II. Jurisdiction and Venue**

2. This Court has jurisdiction over an action under 28 U.S.C. §§ 1331 and 1345.  
3. Venue is proper in the Southern District of Mississippi under 28 U.S.C. § 1391 because Hart resides in Jackson, Mississippi.

**III. Facts**

4. In 2001, Hart applied for and was granted a William D. Ford Federal Direct Consolidation Loan (Direct Consolidation Loan) from the U.S. Department of Education,

authorized under Title IV, Part D of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1087a *et seq.* The Direct Consolidation Loan's details are more particularly set out in the U.S. Department of Education's Certificate of Indebtedness, attached as Exhibit A. *See* Ex. A (Certificate of Indebtedness).

5. On or about June 6, 2001, Hart signed a Promissory Note by which he promised, in exchange for his receipt of funds from the Direct Consolidation Loan, to repay the Direct Consolidation Loan with interest, fees, and U.S. Department of Education's collection costs, including attorney's fees. Attached as Exhibit B is a true and correct copy of the signed Promissory Note. *See* Ex. B (Promissory Note).

6. Through the Direct Consolidation Loan, the U.S. Department of Education disbursed to Hart \$32,253.04 and \$14,213.56 on or about August 21, 2001, at an interest rate of 6.875% annually. Ex. A (Certificate of Indebtedness).

7. On or about May 23, 2013, Hart defaulted on the Promissory Note by failing to make payments when due.

8. After Hart's default, the U.S. Department of Education capitalized \$28,417.90 in unpaid interest and declared the entire outstanding Direct Consolidation Loan balance due immediately, as authorized by the Promissory Note's acceleration clause.

9. As of March 14, 2018, Hart owed the U.S. Department of Education \$98,025.88 on the Direct Consolidation Loan taken out on June 6, 2001, comprised of \$60,660.06 principal plus \$37,365.82 in accrued interest. Additional interest accrues on the principal amount at the annual rate of 6.875 percent and a daily rate of \$11.42 until the date judgment is entered, and thereafter at such rate as the U.S. Department of Education establishes pursuant to Section 455(b) of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1087a *et seq.* *See* Ex. A (Certificate of

Indebtedness).

**Count I – Breach of Contract**

10. The United States incorporates the foregoing paragraphs of the Complaint as if fully restated herein.

11. Hart formed a contract with the U.S. Department of Education when he signed the Promissory Note by which he promised, in exchange for his receipt of the funds from the Direct Consolidation Loan, to repay the Direct Consolidation Loan with interest, fees, and the U.S. Department of Education's collection costs, including attorney's fees.

12. Hart materially breached the Promissory Note by failing to make payments of his Direct Consolidation Loan debt when due, and he has persisted in that failure through the present date.

13. Hart's material breach of the Promissory Note has caused the United States to suffer damages in the amount of \$98,025.88 as of March 14, 2018, plus future interest at the rate of \$11.42 per day until the date judgment is entered, plus post-judgment interest at the statutory rate thereafter.

**Prayer for Relief**

The United States respectfully requests that the Court enter judgment in its favor, as follows:

a. That Hart materially breached the Promissory Note by failing to make payments on his Direct Consolidation Loan debt, as required therein;

b. That, due to Hart's material breach of the Promissory Note, Hart is liable in damages to the United States in the amount of \$98,025.88, as of March 14, 2018; plus daily prejudgment interest in the amount of \$11.42 from March 14, 2018, until the judgment date; plus

post-judgment interest at the statutory rate on and after the judgment date;

c. That Hart is liable for the U.S. Department of Education's collection costs, including reasonable attorney's fees and litigation costs, including filing fee costs in the amount of \$400.00 (\$350.00 filing fee plus \$50.00 administrative fee) in favor of the United States, pursuant to 28 U.S.C. § 2412(a)(2); and

d. All other relief in favor of the United States that the Court deems just and proper.

DATED: May 22, 2018

Respectfully submitted,

D. MICHAEL HURST, JR.  
United States Attorney

BY:

/s/ J. Wesley Webb  
J. WESLEY WEBB (MSB #104495)  
*Assistant United States Attorney*  
Office of the United States Attorney  
SOUTHERN DISTRICT OF MISSISSIPPI  
501 East Court Street, Suite 4.430  
Telephone: 601.965.4480  
Facsimile: 601.965.4032  
E-mail: James.Webb2@usdoj.gov

U. S. DEPARTMENT OF EDUCATION  
SAN FRANCISCO, CALIFORNIA

CERTIFICATE OF INDEBTEDNESS #1 OF 1

WILLIAM A HART  
AKA WILLIAM HART  
AKA WILLIAM ALLEN HART  
2030 SOUTHWOOD RD  
JACKSON, MS 39211  
Account No. XXXXX0302

I certify that U.S. Department of Education records show that the BORROWER named above is indebted to the United States in the amount stated below plus additional interest from 03/14/18.

On or about 06/06/01, the BORROWER executed a promissory note to secure a Direct Consolidation loan from the U.S. Department of Education. This loan was disbursed for \$32,253.04 & \$14,213.56 on 08/21/01 at 6.875 % interest per annum. The loan was made by the Department under the William D. Ford Federal Direct Loan Program under Title IV, Part D of the Higher Education Act of 1965, as amended, 20 U.S.C. 1087a et seq. (34 C.F.R. Part 685). The Department demanded payment according to the terms of the note, and the BORROWER defaulted on the obligation on 05/23/13. Pursuant to 34 C.F.R. § 685.202(b), a total of \$28,417.90 in unpaid interest was capitalized and added to the principal balance.

The Department has credited a total of \$9,036.00 in payments from all sources, including Treasury Department offsets, if any, to the balance. After application of these payments, the BORROWER now owes the United States the following:

Principal:	\$60,660.06
Interest:	\$37,365.82
Total debt as of 03/14/18:	\$98,025.88

Interest accrues on the principal shown here at the rate of \$11.42 per day.

Pursuant to 28 U.S.C. § 1746(2), I certify under penalty of perjury that the foregoing is true and correct.

Executed on: 5-2-18

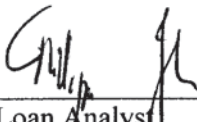
  
\_\_\_\_\_  
Loan Analyst  
Litigation Support Unit

EXHIBIT A



## Promissory Note

Page 1 of 3

JUN 15 2001

Borrower's Name: WILLIAM HART

Borrower's Social Security Number: [REDACTED]

## REPAYMENT PLAN SELECTION

Carefully read question #5, "What are my repayment plan options?" on the "Frequently Asked Questions" Page to understand the repayment plans available to you. Then, complete this section to select your repayment plan. Remember--

- All student loans must be repaid under the same repayment plan. Parent PLUS loans may be repaid under a different repayment plan.
- If you select the Income Contingent Repayment Plan, you must complete the "Repayment Plan Selection" AND "Income Contingent Repayment Plan Consent to Disclosure of Tax Information" forms. Both forms can be downloaded from the "Forms and Publications" Page. **Your selection cannot be processed without these forms.**
- **If you want to consolidate a defaulted student loan(s) and you have not made a satisfactory repayment arrangement with your current holder(s), you must select the Income Contingent Repayment Plan.**

Place an "X" in the box that corresponds to your repayment plan selection for each loan type. Note that Direct PLUS Consolidation Loans cannot be repaid under the Income Contingent Repayment Plan.

		Income Contingent	Standard	Extended	Graduated
STUDENT LOANS	Direct Subsidized and Unsubsidized				
	Consolidation Loans:	X			
PARENT LOANS	Direct Plus Consolidation Loans:	N/A			

## PROMISSORY NOTE

## Promise to Pay:

I promise to pay to the U.S. Department of Education (ED) all sums (hereafter "loan" or "loans") disbursed under the terms of this Promissory Note (note) to discharge my prior loan obligations, plus interest, and other fees that may become due as provided in this note. If I fail to make payments on this note when due, I will also pay collection costs including but not limited to attorney's fees and court costs. If ED accepts my application, I understand that ED will on my behalf send funds to the holder(s) of the loan(s) selected for consolidation in order to pay off this loan(s). I further understand that the amount of this loan will equal the sum of the amount(s) that the holder(s) of the loan(s) verified as the payoff balance(s) on that loan(s) selected for consolidation. My signature on this note will serve as my authorization to pay off the balance(s) of the loan(s) selected for consolidation as provided by the holder(s) of such loan(s).

This amount may be more or less than the estimated total balance I have indicated in the Loan Information Section. Further, I understand that if any collection costs are owed on the loans selected for consolidation, these costs may be added to the principal balance of the consolidation loan.

I understand that this is a Promissory Note. I will not sign this note before reading it, including the text on the reverse side, even if I am advised not to read the note. I am entitled to an exact copy of this note and a statement of the Borrower's Rights and Responsibilities. My signature certifies that I have read, understand, and agree, to the terms and conditions of this note, including the Borrower Certification and Authorization printed on the reverse side and the Borrower's Rights and Responsibilities.

If consolidating jointly with my spouse, we agree to the same terms and conditions contained in the Borrower Certification and Authorization. In addition, we confirm that we are legally married to each other and understand and agree that we are and will continue to be held jointly and severally liable for the entire amount of the debt represented by the Federal Direct Consolidation Loan without regard to the amounts of our individual loan obligations that are consolidated and without regard to any change that may occur in our marital status. We understand that this means that one of us may be required to pay the entire amount due if the other is unable or refuses to pay. We understand that the Federal Direct Consolidation Loan we are applying for will be cancelled only if both of us qualify for cancellation. We further understand that we may postpone repayment of the loan only if we provide ED with written requests that confirm Federal Direct Consolidation Loan Program deferment or forbearance eligibility for both of us at the same time.

I UNDERSTAND THAT THIS IS A FEDERAL LOAN THAT I MUST REPAY.

*William Allen Hart*

Signature of Borrower

6-6-01

Date

Signature of Spouse(if consolid

Date

EXHIBIT B

## **William D. Ford Federal Direct Consolidation Loans**

### **Obtained by application via the web**

**Background:** The William D. Ford Federal Direct Loan Program (Direct Loan Program) is authorized under Title IV, Part D of the Higher Education Act of 1965, as amended 20 U.S.C. Section 1087a et seq. Loans under the Direct Loan Program first became available on July 1, 1994. Under the Direct Loan Program, Education provides funds directly to borrowers.

Four types of loans are offered under the Direct Loan Program: Subsidized Direct Stafford, Unsubsidized Direct Stafford, Direct PLUS (Parent Loan for Undergraduate Students), and Direct Consolidation Loans.

The Federal Direct Consolidation Loan Program enables borrowers to apply for a loan to consolidate outstanding educational loans made pursuant to Title IV of the Higher education Act of 1965, as amended. The Consolidation Loan retires the underlying loans and issues a new loan in the amount of the payoff needed to retire those debts. Up until 2005, borrowers could consolidate a single loan into a new Direct Consolidation loan.

**Applying for Direct Consolidation Loans:** Potential borrowers could apply for a Direct Consolidation Loan by accessing [loanconsolidation.ed.gov](http://loanconsolidation.ed.gov) (current applicants access StudentLoan.ed.gov). Direct Consolidation Loan applications and promissory notes, along with Borrower's Rights and Responsibilities and other documents (loan documents) were made available at that website. Applicants could download a paper copy of the loan documents, or, for Direct Consolidation Loans, they could choose to complete a loan application online – commonly known as the “web app.”

Web applications allowed prospective Direct Consolidation Loan borrowers to complete the application for a Direct Consolidation Loan online with the option, at the end of the process, to either sign a promissory note electronically (e-sign), to have a paper copy of the promissory note mailed to them to return for processing, or to print their own copy of the promissory note to return for processing. Before selecting the method of signing/accessing the promissory note, applicants progress through a series of screens requesting demographic information and a listing of the loans for consolidation.

Those applicants requesting a mailed promissory note receive a four page application/promissory note. Those applicants printing the note from the website will print out a three page promissory note. The applicant signs and returns the note. Education's business practices have been to retain all pages of the promissory note returned by the applicant, but the applicant is only required to return the signature page. The information requested in the other pages has already been entered into the website from previous screens and will eventually migrate into databases used to process and service the loans. For many Web App borrowers only the signature page is returned. Education can provide templates of the entire note.

**Processing Direct Consolidation Loans:** After receiving the Direct Consolidation loan application, Education sends a Federal Direct Consolidation Loan Verification Certificate (LVC) to the loan holders. The loan holder certifies the balance and interest rate as of a specific payoff date and returns the LVC to Education. The LVC is used to determine the balance and interest rate of the Direct Consolidation Loan.

The amount disbursed may differ slightly from the amount on the LVC as the loan may not book precisely on the payoff date provided on the LVC.

The disbursed amount and interest rate does not appear on the LVC as they are not known at the time the borrower signs the promissory notes. The interest rate of the Direct Consolidation loan is determined by the weighted average of the purchased loans rounded up to the nearest one-eighth of one percent. Once the Direct Consolidation loan has booked, the borrower is sent a "Welcome Notice" which discloses the balance and interest rate for the new Direct Consolidation loan and the borrower is given the opportunity to dispute that balance.

**Litigation Support:** Education staff can provide a declaration, with supporting documentation, describing the Direct Loan Consolidation process if needed. The declaration includes templates of the website screens that the applicant would have viewed when applying for the Direct Consolidation Loan.



JS 44 (Rev. 06/17)

**CIVIL COVER SHEET** 3:18-cv-329-WHB-JCG

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
J. Wesley Webb, AUSA  
United States Attorney's Office, SDMS  
501 East Court Street, Ste 4.430 Jackson, MS 39201 601-965-4480

**DEFENDANTS**

WILLIAM HART

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input checked="" type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from Another District (specify)  
☐ 6 Multidistrict Litigation - Transfer  
☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Title IV, Part D of the Higher Education Act of 1965, as amended, 20 U.S.C. 1087a et seq.

Brief description of cause:

Borrower defaulted on federal student loan obligation.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE  
05/21/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ J. Wesley Webb

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_